



MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion 08-03-007

Unless permitted by a waiver, a public employee must not participate in any matter that affects, in a manner distinct from its effect on the public generally, any business in which the public employee has an economic interest. A member of the Sign Review Board¹ asks whether he can participate in a matter where he has sold stone or other building products to one of the parties. The Commission concludes that this board member cannot participate in those matters.

The Sign Review Board advises the Director of the Department of Permitting Services on applications for sign permits. In this case, the requestor, a member of the Board, is the owner of a building supply company, which sells natural stone and other building products that are sometimes used in the construction of signs or in the landscapes where the sign is to be sited. The Board member believes he can review each case impartially, regardless of whether any of his building materials are involved, but asks whether the ethics law precludes his participation in such cases.

The Commission concludes that the Board member cannot participate in any matter where he knows, or reasonably should know, that one of the parties has purchased building supplies from his company. Unless permitted by a waiver, a public employee must not participate in any matter that affects, in a manner distinct from its effect on the public generally, any business in which the public employee has an economic interest. § 19A-11(a)(1)(B). The Board member might be tempted to recommend approval of an application submitted by a customer in the hopes of furthering his business interests. Recusal from such cases under § 19A-11(a)(1)(B) avoids this potential conflict.²

Of course, the Board member cannot use his position on the Board to solicit customers for his building supply business. But the Board member may sell building supplies to a former applicant who comes to his place of business, unsolicited.

¹ The Sign Review Board is established in § 59-F-10.2.

² To similar effect is § 19A-11(a)(2)(E), which prohibits an employee from participating in any matter where the employee knows, or reasonably should know, that any party to the matter is any business or individual that is a party to an existing contract with the public employee or a relative, if the contract could reasonably result in a conflict between private interests and official duties.

In reaching this decision, the Commission has relied upon the facts as presented by the requestor(s).

A handwritten signature in black ink, appearing to read "Antar C. Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

April 30, 2008

Antar C. Johnson, Chairman